

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STERLING COLLISION CENTERS, INC.,

Plaintiff/Counter-Defendant,

v.

KELLI KILDUFF,

Defendant/Counter-Plaintiff.

Case No. 16-10103

Honorable John Corbett O'Meara

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION TO STRIKE**

This matter came before the court on plaintiff Sterling Collision Center's March 8, 2016 Motion to Strike and/or Dismiss Defendant's Answer, Alleged Affirmative Defenses and Purported Counterclaim. Defendant Kelli Kilduff filed a response April 10 and 11, 2016; and Plaintiff filed a reply April 15, 2016. No oral argument was heard.

There is no dispute that this is an action under the Employee Retirement Income Security Act "(ERISA)" of 1974, 19 U.S.C. §§ 1101, *et seq.* As such, Defendant's answer, affirmative defenses and counterclaim are all preempted by ERISA. Therefore, Plaintiff is correct that portions of Defendants pleadings should be stricken because of the preemption; and the court will grant Plaintiff's motion to that extent. However, the court will also grant Defendant leave to file amended pleadings that reflect the parties' mutual understanding that the issues contained in the complaint and the counterclaim are all preempted by ERISA.

ORDER

It is hereby **ORDERED** that Plaintiff's March 8, 2016 motion is **GRANTED IN PART AND DENIED IN PART**.

It is further **ORDERED** that Defendant **MAY FILE** amended pleadings within 30 days of this order.

s/John Corbett O'Meara
United States District Judge

Date: July 18, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, July 18, 2016, using the ECF system.

s/William Barkholz
Case Manager